IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.115 OF 1992

State of Maharashtra ...Appellant.

V/s

Shri Shivaji Anandrao
Shinde, Occ-Service,
R/o. Mhaisal, Tal. Miraj,
District Sangli. ...Respondent.

Mr. A.S. Shitole for the State.

None for the respondent.

CORAM: V.M. KANADE, J.
DATE : 3rd February, 2005

ORAL JUDGMENT:

1. The State has filed this appeal against the judgment and order passed by the Special Judge, Sangli in Special Case No.1 of 1987. By the said judgment and order the Trial Court was pleased to acquit the accused of the offence punishable under section 161 of the Indian Penal Code and section 5(1)((d) read with section 5(2) of the Prevention of Corruption Act, 1947.

2. The prosecution case in brief is that the accused was working as Professional Tax Inspector. The complainant Ashok Khadilkar had not paid the professional tax in the year 1985-86. The accused, therefore, informed the complainant that he was liable

to pay penalty of Rs 10,000/-. A Challan was issued to the complainant and he was asked to make payment according to the Challan on 16/4/1986. The complainant went to the office of the accused and accused informed him that he should pay penalty of Rs 45/-. He informed him that if the notice of penalty was served, the complainant would have to pay heavy penalty. He, therefore, demanded Rs 500/- towards illegal gratification. Finally, the amount was reduced to Rs 150/-. The complainant lodged a report with the Anti-corruption Bureau and a trap was led and the complainant paid the amount demanded by the accused and after agreed signal was given, the accused was apprehended and the complaint was lodged against him. A charge-sheet was filed, after the sanction was granted by the appointing authority.

3. The Trial Court acquitted the accused by giving him benefit of doubt.

4. The learned APP has taken me through the judgment and order of the Trial Court as also the evidence adduced by the prosecution.

5. From the evidence of the complainant, it can be seen that he had admitted that he had committed

default in payment of sale tax, professional tax and had promised to pay the tax alongwith the penalty on the next day. From his evidence, it can be seen that on the first visit to the complainant on 8/4/1986, the accused had not made any demand but second time a demand was allegedly made on 16/4/1986 and the third demand and acceptance was on 21/4/1986. From the evidence, it can be seen that there is no corroboration to the fact of first and second demand. Though the complainant in his evidence has stated that at the time when the second demand was made there was one person present alongwith him, that person was not examined by the prosecution. From the evidence of the complainant and other witnesses, it can be seen that there are number of discrepancies regarding acceptance of the amount by the accused. The defence of the accused is that the money was thrusted in his hip pocket. Further, it can be seen that the accused had already prepared a Challan for charging penalty of Rs 45/- and he had given Challan to the complainant before the alleged payment of bribe was made. It has been held by this Court in number of cases that acceptance of money after the work was done did not establish the acceptance of the money by the accused as his reward for doing the work which was already done. Thus, in my view, the prosecution has failed to

establish the demand and acceptance and further the acceptance of bribe for doing his official duty. The Trial Court has given cogent reasons for acquitting the accused of the offence with which he was charged. No case is made out for interfering with the said judgment and order in appeal. Appeal is accordingly dismissed.

V.M. KANADE, J.